Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 5045 /2004

PETITIONER

Tikaram Nishad, son of Shri Tularam Nishad, aged about 55 years, Assistant Teacher, Primary School – Budiya, Vikas Khand – Tamnar, Distt. Raigarh (CG)

5026/04
R. No.
Presented by Shri Roshan Dubey
dated 23-12-04

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through : the Secretary, Department of Tribal Welfare, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

2. The Commissioner, Department of Tribal Welfare, D.K.S. Bhawan, Raipur (C.G.)

3. The Collector, District Raigarh (Chhattisgarh)

4. The Assistant Commissioner, Tribal Welfare, Raigarh (C.G.)

शपथ आयुक्त बिलासपुर (छ.ग.) 22/12/04 बिलासपुर तहसील कोर्ट

23/12/04
Clerk to A.G. Bilaspur

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA, 1950 FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS ETC. AND FOR APPROPRIATE ORDER / ORDERS, DIRECTION / DIRECTIONS.

(26)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.5045 OF 2004

Petitioner : Tikaram Nishad

versus

Respondents : State of Chhattisgarh and others

Present : Mr. C. Jayant K. Rao, counsel for the petitioner.
Mr. Utkarsh Verma, Deputy Government Advocate for the State/respondents.

ORDER

(Passed on 22nd Day of February, 2007)

The petitioner, while working as Assistant Teacher in Primary School, Budiya, Block Tamnar was transferred to Primary School, Rabo, Block Tamnar within the same district, vide order dated 31-7-2004 (P-2). The petitioner moved this Court by a writ petition, being Writ Petition No.2997 of 2004. This Court, vide order dated 17-9-2004 (P-1), granted liberty to the petitioner to make a representation before the competent authority. It was further directed that the same would be decided in accordance with law as early as possible, preferably within a period of six weeks from the date of receipt of the representation.

2. The competent authority, i.e., the Collector (Tribal Development), Raigarh, vide order dated 29-11-2004 (P-4), dismissed

the representation dated 28-9-2004 of the petitioner on the ground that his transfer was made on being found him surplus. The same cannot be cancelled. The petitioner has filed this petition challenging the validity of the order dated 29-11-2004 (P-4) and the impugned transfer order dated 31-7-2004 (P-2).

3. The impugned transfer order was passed on 31-7-2004. No stay was granted by this Court. The petitioner must have joined the new place of posting.

4. Be that as it may, with the passage of time, this petition has become infructuous as period of transfer is not applicable forever. At this point of time, there is no question to examine the validity of the impugned transfer order. However, the respondents are at liberty to pass appropriate orders keeping in view the public interest and administrative exigency, without insisting on compliance of the impugned transfer order.

5. It is well settled principle of law that transfer is an incident of service and it is for the employer to decided as to where a particular officer/employee be posted keeping in view public interest as well as administrative exigency. This Court has limited jurisdiction to interfere in the transfer matter and this Court can interfere only in the case of proved *mala fide*, non-competence of authority passing the transfer order and transfer order not being in conformity with the rules and regulations.

(26)

6. In view of the above, the writ petition stands disposed of.

No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Gopal